

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ROBERT CYRUS,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No.: 06-568-DRB
)	
HYUNDAI MOTOR COMPANY,)	
et al.,)	
)	
Defendants.)	

MOTION TO STRIKE

Comes now Plaintiff Robert Cyrus and moves the Court to strike the Declaration of Gianetta Turner (see Exhibit A to HMMA's Reply Brief), the Declarations of Greg Kimble (see HMMA's Reply Brief, page 2), and those portions of Defendant HMMA's Reply Brief that rely upon evidentiary submissions outside of the pleadings and judicially noticed facts (see Defendant HMMA's Reply Brief, pp. 1, 2, 5 and 6), and for grounds Plaintiff says:

Judgment on the pleadings is appropriate when there are no material facts in dispute, and judgment may be rendered by considering the substance of the pleadings and any judicially noticed facts. See *Bankers Ins. Co. v. Florida Residential Property and Cas. Joint Underwriting Ass'n*, 137 F.3d 1293, 1295 (11th Cir.1998) (citing *Hebert Abstract Co. v. Touchstone Properties, Ltd.*, 914 F.2d 74, 76 (5th Cir.1990));

see also Rule 12(c), Fed.R.Civ.P. When considering judgment on the pleadings the court must accept the facts in the complaint as true and view them in the light most favorable to the nonmoving party. See *Ortega v. Christian*, 85 F.3d 1521, 1524 (11th Cir.1996) (citing *Swerdloff v. Miami Nat'l Bank*, 584 F.2d 54, 57 (5th Cir.1978)). The complaint may not be dismissed “ ‘unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’ ” *Slagle v. ITT Hartford*, 102 F.3d 494, 497(11th Cir.1996) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80 (1957) & citing *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 811, 113 S.Ct. 2891, 2916-17, 125 L.Ed.2d 612 (1993)).

In light of the standard governing motions for judgment on the pleadings, Defendant HMMA's reliance on evidentiary submissions is not well taken. Plaintiff submits all such evidence, as well as any argument relying on it, should be stricken.

Respectfully submitted

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION

ROBERT CYRUS,)	
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Plaintiff,)	
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vs.)	Civil Action No.: 06-568-DRB
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HYUNDAI MOTOR COMPANY,)	
et al.,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification to the following attorneys of record:

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